

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 25-ALJ-04-0004-IJ
Appellate Case No. 2025-001166

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SC Court of Appeals

ROBERT DEAL, JR., # 301062,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Christina Catoe Bigelow
Deputy General Counsel
Office of General Counsel
South Carolina Dept. of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THE LOWER COURT PROPERLY DISMISSED THE APPEAL BECAUSE APPELLANT'S GRIEVANCE DID NOT IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST WHERE APPELLANT DID NOT WORK FOR A PRISON INDUSTRIES ENHANCEMENT PROGRAM SUBJECT TO THE PREVAILING WAGE STATUTE.

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of Robert Deal (“Appellant”), an inmate in the South Carolina Department of Corrections (“SCDC”). In 2024, Appellant submitted a grievance seeking to be paid pursuant to the prevailing wage statute, S.C. Code Ann. § 24-3-430(D), for work performed at McCormick Correctional Institution. The grievance was denied on the ground that the work Appellant performed was service work not subject to the prevailing wage statute. Appellant filed a Notice of Appeal in the Administrative Law Court (ALC) on January 6, 2025. On May 21, 2025, Judge S. Phillip Lenski issued an order dismissing the appeal on the ground that the work performed by Appellant was not subject to the prevailing wage statute and therefore no state-created liberty or property interest was implicated. This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

ARGUMENT

THE LOWER COURT PROPERLY DISMISSED THE APPEAL BECAUSE APPELLANT’S GRIEVANCE DID NOT IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST WHERE APPELLANT DID NOT WORK FOR A PRISON INDUSTRIES ENHANCEMENT PROGRAM SUBJECT TO THE PREVAILING WAGE STATUTE.

Despite Appellant’s allegation that he was denied a prevailing wage under S.C. Code 24-3-430(D), the job Appellant actually worked was not subject to the prevailing wage statute. Accordingly, the Administrative Law Court properly dismissed the appeal as not implicating a state-created liberty or property interest.

There are three types of Prison Industries programs at the South Carolina Department of Corrections. They are Prison Industries Enhancement Programs (“PIECPs”), Prison Industries Service Programs, and Traditional Industries Programs. PIECPs and Prison Industries Service Programs operate with private industry sponsors, although they are not required to do so. Only PIECPs are subject to the former prevailing wage statute, *i.e.*, S.C. Code § 24-3-430 (D) and implicate a state-created liberty interest.¹ See Wicker v. S.C. Dep’t of Corr., 360 S.C. 421, 424, 602 S.E.2d 56, 58 n. 1 (2004) (the Court also stated that this was a “very limited circumstance” and the “holding [] is extremely limited and is not to be viewed as expanding the jurisdiction of the ALJ in any other circumstances”).

Prison Industries Service Programs, in contrast, are governed by S.C. Code 24-1-295 and inmate “wages may be less than the prevailing wage for work of a similar nature...” S.C. Code Ann. § 24-1-295. Service work is defined as including “any work that includes repair, replacement of

¹ The so-called “prevailing wage statute” was amended effective May 21, 2024 to eliminate the language that inmates be paid a prevailing wage. It is now lawful for inmates to be paid the federal minimum wage for PIECP work. See S.C. Code 24-3-430(D)(as amended).

original manufactured items, packaging, sorting, recycling, labeling, or similar work that is not original equipment manufacturing.” *Id.* The statute governing payment for service work also provides for statutory deductions to be taken from inmate wages. *Id.* (1)-(6).

Prison Industry Traditional Programs are governed by 24-3-320 and 330, which allows “the manufacture or production of such articles or products as may be needed for the construction, operation, maintenance, or use of any office, department, institution, or agency [. . . in] this State.” S.C. Code Ann. § 24-3-320. These statutes do not include any language regarding payment. *See* S.C. Code Ann. § 24-3-320 and 330.


The work Appellant performed at McCormick was service work not subject to the prevailing wage statute. SCDC’s Inmate Financial System shows Appellant was paid \$.30 – \$.35 an hour for his work at McCormick. See Financial Records. This indicates that Appellant did not work for a designated PIECP, but for a service program in accordance with S.C. Code Ann. § 24-1-295, which allows for payment less than the prevailing wage. Significantly, McCormick did not even have a PIECP program during the time Appellant worked there. See Affidavit of Richard Hodgkiss. Instead, McCormick had a split service and traditional program for furniture and upholstery. See Affidavit of Richard Hodgkiss. Since Appellant did not work a PIECP job subject to the prevailing wage statute during the timeframe in question, the ALC properly dismissed the appeal for failing to implicate a state-created liberty or property interest.

CONCLUSION

For the reasons discussed above, Respondent respectfully requests that this Court affirm the determination of the Administrative Law Court.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY: 
CHRISTINA CATOE BIGELOW
Deputy General Counsel
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

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